



STATE OF HAWAII
CONTRACT FOR GOODS AND SERVICES
 (IN THE FOLLOWING CATEGORIES: EXEMPT; SMALL PURCHASE;
 SOLE SOURCE; OR EMERGENCY)

This Contract, executed on the respective dates indicated below, is effective as of
July 1, 2007, between EMPLOYEES' RETIREMENT SYSTEM OF THE
(Insert name of state department, agency, board or commission)
 State of Hawaii ("STATE"), by its ADMINISTRATOR & TRUSTEE
(Insert title of person signing for State)
 (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),
 whose address is 201 MERCHANT STREET, SUITE 1400, HONOLULU, HI 96813
and BANK OF HAWAII
 ("CONTRACTOR"), a CORPORATION
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
 under the laws of the State of HAWAII, whose business address and federal
 and state taxpayer identification numbers are as follows: FEDERAL TAX ID NO. 99-0033900
130 MERCHANT STREET, HONOLULU, HI 96813

RECITALS

A. The STATE is in need of the goods and services, or both, described in this Contract and its attachments. The CONTRACTOR is agreeable to providing the goods and services, or both, as the case may be.

B. This Contract is for (check one box):

☒ (1) A procurement expenditure of public funds for goods or services, or both, that is otherwise exempt from public bidding as set forth in section 103D-102, Hawaii Revised Statutes ("HRS"), and chapter 3-120, Hawaii Administrative Rules ("HAR"); or

☐ (2) A small purchase procurement of goods or services, or both, as set forth in section 103D-305, HRS, and subchapter 8, chapter 3-122, HAR; or

☐ (3) A sole source procurement of goods or services, or both, as set forth in section 103D-306, HRS, and subchapter 9, chapter 3-122, HAR; or

☐ (4) An emergency procurement of goods or services, or both, as set forth in section 103D-307, HRS, and subchapter 10, chapter 3-122, HAR.

C. Money is available to fund this Contract pursuant to:

(1) Act 178, SLH 2005

(Identify state sources)

or (2)

(Identify federal sources)

or both, in the following amounts: State \$ See Attachment-S2

Federal \$ _____

D. Pursuant to §88-22,29 & 31 HRS, the STATE

(Legal authority to enter into this Contract)

is authorized to enter into this Contract.

E. The agency's Chief Procurement Officer is AARON FUJIOKA
 who ☐ has approved this procurement or ☒ is not required to approve this procurement.

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in Attachment-S1, which is made a part of this Contract.

2. Compensation. The CONTRACTOR shall ☒ compensate for goods supplied or services performed, or both, under this Contract in a total amount not to exceed See Attachment-S2 DOLLARS (\$ _____), including approved costs incurred and taxes, according to the Compensation and Payment Schedule set forth in Attachment-S2, which is made a part of this Contract.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR ☐ is required to provide or ☒ is not required to provide: ☐ a performance bond, ☐ a payment bond, ☐ a performance and payment bond in the amount of _____ DOLLARS (\$ _____).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of N/A DOLLARS (\$ _____) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by any party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

REDACTED
(signature)
DAVID SHIMABUKURO
(print name)
ADMINISTRATOR
(print title)
JUN 7 2007
(date)

CORPORATE SEAL
(if available)

ST-
REDACTED
COLBERT M. MATSUMOTO
(Print Name)
TRUSTEE
(Print Title)
JUN 12 2007
(Date)

CONTRACTOR

BANK OF HAWAII

REDACTED
STEPHANIE SAITO
(Print Name)
EXECUTIVE VICE PRESIDENT...
(Print Title)
JUNE 7, 2007
(Date)

APPROVED AS TO FORM:

REDACTED
Deputy Attorney General

*Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 7TH day of JUNE, 2007 before me appeared
STEPHANIE SAITO and N/A, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are
EXECUTIVE VICE PRESIDENT and N/A of
BANK OF HAWAII, the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said
instrument as the free act and deed of the CONTRACTOR

REDACTED

LS
(Notary Seal)

(Signature) AURORA R. MANZON
(Print Name)
Notary Public, State of HAWAII
My commission expires: DECEMBER 30, 2010


CERTIFICATION

I, Terry T. Sasamura, do hereby certify that I am the Vice President and Secretary of Bank of Hawaii, a corporation duly organized and existing under the laws of the State of Hawaii (the "Corporation"); and I further certify that Stephanie L. Saito is the duly appointed Executive Vice President of the Corporation ("Authorized Officer"); and

I further certify that such Authorized Officer is empowered to act on behalf of the Corporation under the Corporation's By-Laws, as amended April 25, 1997 and pursuant to the Corporation's Signing Authority of Employees, as amended August 22, 2002, providing for certain signing and approval authority ("Signing Authority"); and

I further certify that such Signing Authority has not been rescinded and remains in full force and effect; and

I further certify that the signature set forth below is the Authorized Officer's true, correct and genuine signature and that she is authorized in the name of the Corporation to negotiate, execute and deliver that certain Contract for Goods and Services, effective July 1, 2007, between the Employees' Retirement System of the State of Hawaii and the Corporation.

<u>Name</u>	<u>Office</u>	<u>Signature</u>
Stephanie L. Saito	Executive Vice President	 / REDACTED

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Corporation on this 8th day of June 2007.

BANK OF HAWAII

REDACTED
Terry T. Sasamura
Vice President and Secretary

SCOPE OF SERVICES

The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all services as set forth in the Employees' Retirement System of the State of Hawaii, Expression of Interest (December 19, 2006) as amended, (as so amended, sometimes hereafter called the "EOI") and the CONTRACTOR'S accepted response all of which, even if not physically attached to the Agreement are hereby made a part of this Agreement.

In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Agreement, including all attachments and addenda; (2) the EOI, including all attachments and addenda; and (3) the proposal and exhibits of the CONTRACTOR.

COMPENSATION AND PAYMENT SCHEDULE

In full consideration for services satisfactorily performed under the Contract, the CONTRACTOR shall be paid the compensation amounts according to the terms and conditions set forth in hereto, in Exhibit "A" and Exhibit "B", attached.

This multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect the State's rights or the CONTRACTOR's rights under any termination clause of the Contract. The head of the purchasing agency must notify the CONTRACTOR on a timely basis if funds are not available for the continuation of the contract for each succeeding fiscal period. In the event of cancellation, the CONTRACTOR will be reimbursed unamortized reasonably incurred nonrecurring costs, if applicable.

TIME OF PERFORMANCE

This contract shall begin on July 1, 2007 and shall remain in force through June 30, 2010; provided, however, that this contract may be terminated by either the STATE or the CONTRACTOR by an instrument in writing delivered or mailed, postage prepaid to the other party. Termination by the STATE shall take effect not sooner than thirty (30) days after date of such notice. The STATE shall have the option to renew the contract for three (3) periods not to exceed one (1) year each, on the same terms and date the same price as the original contract, unless the contract has been terminated as provided above.



STATE OF HAWAII

**CERTIFICATE OF EXEMPTION
FROM CIVIL SERVICE****1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development ("DHRD").***

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature) REDACTED

(Date) JUN 7 2007

DAVID SHIMABUKURO

(Print Name)

ADMINISTRATOR

(Print Title)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, HRS.

(Signature)

(Date)

(Print Name)

(Print Title, if designee of the Director of DHRD)

EXHIBIT “A”

**Employees' Retirement System of the State of Hawaii-Expression of Interest to Provide Banking Services
Attachment A- ERS Consolidated Banking Fees-Recommended Services
January, 2007**

Employees' Retirement System of the State of Hawaii - Expression of Interest to Provide Banking Services				
Attachment A - ERS Consolidated Banking Fees - Recommended Services				
Annual Checking Account Balance Summary	Monthly Volume	Annual Volume	Unit Cost	Annual Cost
Average Ledger Balance - Average Daily		\$4,300,000		
Less Average Uncollected Balance		\$1,400,000		
Average Collected Balance		\$2,900,000		
Annual Earnings Credit and Profitability Calculation				
Annual Service Charges				
Account Maintenance	5	60	\$ 8.13	\$ 487.50
Additional Checking Statements	8	96	\$ 2.60	\$ 249.60
FDIC Assessment (rate changes quarterly)	4,300	51,600	\$ 0.0068	\$ 350.88
Concentration Account Services				
Primary	1	12	\$ 24.05	\$ 288.60
Sub Account	2	24	\$ 3.25	\$ 78.00
Deposit Services				
Customer Deposits Received	35	420	\$ 0.59	\$ 247.80
Cash Deposited (\$1,000s)	100	1,200	\$ 0.005	\$ 6.00
Currency Ordered (\$1,000s)	0	0	\$ 0.0007	\$ -
Checks Deposited on ERS Bank	20	240	\$ 0.026	\$ 6.24
Checks Deposited - Local Banks	40	480	\$ 0.039	\$ 18.72
Checks Deposited - Other Banks	20	240	\$ 0.046	\$ 10.92
Return Items Charged Back	2	24	\$ 3.25	\$ 78.00
Incoming Wire Transfers / EDI Transactions	40	480	\$ 0.0228	\$ 10.94
Incoming Wire Transfers - Email Notification	40	480	\$ 7.15	\$ 3,432.00
Account to Account Transfers	20	240	\$ -	\$ -
Outgoing Wires (VIA BBC)	5	60	\$ 9.75	\$ 585.00
ACH Services				
Debit Blocking	5	60	\$ 16.25	\$ 975.00
ACH Direct Service				
Files Transmitted	10	120	\$ 3.25	\$ 390.00
ACH Transactions				
1-1,000	1,000	12,000	\$ 0.065	\$ 780.00
1,001 - 2,000	1,000	12,000	\$ 0.052	\$ 624.00
2,001 +	58,000	696,000	\$ 0.046	\$ 32,016.00
Transaction Recall	10	120	\$ 13.00	\$ 1,560.00
ACH Notification of Change	20	240	\$ 6.50	\$ 1,560.00
ACH Returned Items	10	120	\$ 3.25	\$ 390.00
Check Services				
Stop Payment Service (VIA BBC)	20	240	\$ 7.80	\$ 1,872.00
Checks Paid (With Check Imaging)	4,400	53,000	\$ 0.052	\$ 2,756.00

Annual Checking Account Balance Summary	Monthly Volume	Annual Volume	Unit Cost	Annual Cost
Account Reconciliation Service				
Partial Reconciliation - N/A Use BBC BAI2 or CSV				
Est. fee for info only: \$3,540 per year				
Full Reconciliation - included w/ Positive Pay below				
Est. fee for info only w/ elec. output: \$6,103 per year				
Positive Pay on Checks				
Base Fee (includes 1 recon per month)	1	12	\$ 81.25	\$ 975.00
Additional Recons (weekly cycle)	3	36	\$ 19.50	\$ 702.00
Issue File Processing	1	12	\$ 16.25	\$ 195.00
Check Issues Received	4,400	52,800	\$ 0.036	\$ 1,900.80
Checks Paid	4,400	52,800	\$ 0.036	\$ 1,900.80
Exception Reporting via BBC	1	12	\$ 16.25	\$ 195.00
Electronic Output (Partial Recon format) - Optional	4	48	\$ 13.00	\$ 624.00
Online Banking Service Fees				
Tax Payment Service (TXPress)				
Monthly Maintenance Fee	1	12	\$ 2.60	\$ 31.20
Tax Payment	12	144	\$ 1.95	\$ 280.80
Imaging Services				
(4,400 checks, 100 other items, 100 statements)				
Image Fee	4,500	54,000	\$ 0.023	\$ 1,242.00
eVision online w/ Weekly CD-Rom - Disbursements	4	48	\$ 19.50	\$ 936.00
eVision online w/ Monthly CD-Rom - Other Accts	1	12	\$ 19.50	\$ 234.00
Total				\$ 57,989.80
Online Cash Management Services				
Bankoh Business Connections				
Monthly Maintenance with Dial-up Connection	1	12	\$ 75.00	\$ 900.00
Balances and Transaction Items Loaded (Est.)				
1 - 2,500	2,500	30,000	\$ 0.039	\$ 1,170.00
2,501 - 5000	2,500	30,000	\$ 0.029	\$ 870.00
5,000+	1,500	23,000	\$ 0.026	\$ 598.00
Data Delivery Items Loaded (Est. for BAI2 w/o Disbursements using Positive Pay for Recon.)				
1 - 2,500	1,825	21,900	\$ 0.039	\$ 854.10
Software License		8	No Charge	\$ -
Each Additional License			No Charge	\$ -
Installation/Training			No Charge	\$ -
Service Calls			No Charge	\$ -
Base Fee (Per PC Site)			No Charge	\$ -
Minimum Monthly Fee			No Charge	\$ -
Check Management (module fee, stop payments, photocopies, check inquiries)				
Account Activity - Current Day Reporting	2	24	\$ 6.50	\$ 156.00
Operations II and Pension Receipts Accounts				
Stop Payment Module	1	12	No Charge	\$ -
Wire Module	1	12	\$ 16.25	\$ 195.00
Reset Passwords (With System Administrator)		2	No Charge	\$ -
Audit Confirmation Request Fee	2/acct	20	\$ 9.75	\$ 195.00
Total				\$ 4,938.10

Annual Checking Account Balance Summary	Monthly Volume	Annual Volume	Unit Cost	Annual Cost
EDI Service				
Monthly Maintenance	2	24	\$ 13.00	\$ 312.00
Fax Report Delivery	2	24	\$ 3.25	\$ 78.00
BBC Report Delivery	2	24	No Charge	\$ -
Retail Lockbox				
Monthly Maintenance	1	12	\$ 97.50	\$ 1,170.00
Processed Items (Rough Estimate)	500	6,000	\$ 0.094	\$ 564.00
Copy of Check Processed	500	6,000	\$ 0.065	\$ 390.00
Electronic Output	1	12	\$ 97.50	\$ 1,170.00
CD-Rom	1	12	\$ 32.50	\$ 390.00
Refer to Exhibit VIII - Fee Schedule for complete Account Analysis and Cash Management Fee Schedules.				

EXHIBIT “B”

**Bank of Hawaii-Cash Management Fee Schedule
January, 2007**

Bank of Hawaii - Cash Management Fee Schedule		BoH Standard	ERS Exception 35% Discount	Per Item Savings
ACH Services				
ACH Via BBC				
Monthly Maintenance ACH via BBC	Per Month	\$25.00	\$16.25	\$8.75
Batch Processing	Per Batch	\$5.00	\$3.25	\$1.75
ACH Return Items List via Fax	Per Month	\$20.00	\$13.00	\$7.00
BBC-ACH Auto Generate / Auto Release	Per Month	\$10.00	\$6.50	\$3.50
ACH Via Direct Send				
Implementation Fee-Direct Send, Electronic Returns, Posting File	One Time/Implementation, each*	\$650.00	\$650.00	\$0.00
Monthly Maintenance ACH Direct	Per Month	\$50.00	\$32.50	\$17.50
File Processing - Direct	Per File	\$5.00	\$3.25	\$1.75
Optional Services Applicable to ACH Services listed above				
Related Company/Account Set-up	Per Account	\$25.00	\$16.25	\$8.75
Per Item Fee By Transaction Type, Credits/Debits/Addenda				
1 - 1,000	Per Transaction	\$0.10	\$0.065	\$0.035
1,001 - 2,000	Per Transaction	\$0.08	\$0.052	\$0.028
2,001 - up	Per Transaction	\$0.07	\$0.046	\$0.025
Transaction, File, Batch Deletion	Per File/Batch/Transaction	\$10.00	\$6.50	\$3.50
Transaction, File, Batch Recall	Per File/Batch/Transaction	\$20.00	\$13.00	\$7.00
Return Item Handling	Per Transaction	\$5.00	\$3.25	\$1.75
Notification of Change (NOC)	Per Transaction	\$10.00	\$6.50	\$3.50
Suspended File	Per File	\$100.00	\$65.00	\$35.00
ACH Debit Block				
Implementation Fee (Include 3 Initial filters)	One Time/Implementation	\$25.00	\$16.25	\$8.75
Monthly Maintenance	Per Account/Month	\$25.00	\$16.25	\$8.75
Additional Filter Maintenance	Per Filter/Month	\$5.00	\$3.25	\$1.75
Additional Filter Set-up Fee	Per Filter	\$25.00	\$16.25	\$8.75
Account Reconciliation Services				
Full Reconciliation Service				
Implementation Fee	One Time, Per Account	\$150.00	\$97.50	\$52.50
Base Fee (includes 1 recon per month)	Per Account/Month	\$125.00	\$81.25	\$43.75
Issue File Processing	Per Account/Month	\$25.00	\$16.25	\$8.75
Processing Charges				
Paid Check and Check Issues Received	Per Item	\$0.055	\$0.036	\$0.019
Service Entries	Per Item	\$0.35	\$0.228	\$0.123
Positive Pay Service (includes Full Recon)				
Implementation Fee	One Time, Per Account	\$150.00	\$97.50	\$52.50
Base Fee (includes 1 recon per month)	Per Account/Month	\$125.00	\$81.25	\$43.75
Issue File Processing	Per Account/Month	\$25.00	\$16.25	\$8.75
Processing Charges				
Paid Check and Check Issues Received	Per Item	\$0.055	\$0.036	\$0.019
Service Entries	Per Item	\$0.35	\$0.228	\$0.123
Exception Report Processing (2 reports per day)	Per Report/Day	\$1.00	\$0.65	\$0.35
Positive Pay Exception Reporting via BBC	Per Account/Month	\$25.00	\$16.25	\$8.75
Partial Reconciliation Service				
Implementation Fee	One Time, Per Account	\$75.00	\$48.75	\$26.25
Base Fee (includes 1 recon per month)	Per Account/Month	\$40.00	\$26.00	\$14.00
Processing Charges - Paid Check	Per Item	\$0.055	\$0.036	\$0.019
Reverse Positive Pay Reconciliation Service				
Implementation Fee	One Time, Per Account	\$75.00	\$48.75	\$26.25
Base Fee (includes 1 recon per month)	Per Account/Month	\$40.00	\$26.00	\$14.00
Processing Charges - Paid Check	Per Item	\$0.055	\$0.036	\$0.019
Daily Paid File	Per Output	\$7.00	\$4.55	\$2.45
Deposit Reconciliation Service				
Implementation Fee	One Time, Per Account	\$75.00	\$48.75	\$26.25
Base Fee (includes 1 recon per month)	Per Account/Month	\$40.00	\$26.00	\$14.00
Processing Charges - Deposits	Per Deposit	\$0.035	\$0.023	\$0.012
Optional Services Applicable to Reconciliation Services listed above				
Additional Scheduled Reconcilements	Each	\$30.00	\$19.50	\$10.50
Daily Reports	Per Report/Day	\$1.00	\$0.65	\$0.35
Electronic Output	Per Output	\$20.00	\$13.00	\$7.00
Electronic Output Recreation	Per Output	\$50.00	\$32.50	\$17.50
Issue File Reversal	Per File	\$50.00	\$32.50	\$17.50
Premium Report Package (Full & Positive Pay Service)	Per Account/Month	\$25.00	\$16.25	\$8.75
Deposit Return Service				
Implementation Fee	One Time, Per Account	\$25.00	\$16.25	\$8.75

Bank of Hawaii - Cash Management Fee Schedule		BoH Standard	ERS Exception 35% Discount	Per Item Savings
Base Fee	Per Account/Month	\$25.00	\$18.25	\$8.75
Processing Charges - Deposits	Per Deposit	\$0.03	\$0.02	\$0.011
<u>Fine Sort Service</u>				
Implementation Fee	One Time, Per Account	\$25.00	\$16.25	\$8.75
Base Fee	Per Account/Month	\$25.00	\$16.25	\$8.75
MICR Sort	Per Item	\$0.03	\$0.02	\$0.011
<u>Bankoh Business Connections</u>				
Monthly Maintenance with Company System Administrator	Per Month, Web Access	\$40.00	\$26.00	\$14.00
Monthly Maintenance with Bank System Administrator	Per Month, Web Access	\$75.00	\$48.75	\$26.25
Bank Administration	Per Request, Add/Delete/Change	\$10.00	\$6.50	\$3.50
<u>Information and Reporting</u>				
Balances And Transaction Items Loaded				
1 - 2,500	Per Item	\$0.06	\$0.039	\$0.021
2,501 - 5,000	Per Item	\$0.05	\$0.029	\$0.016
5,001 Up	Per Item	\$0.04	\$0.026	\$0.014
Account Activity - Current Day	Per Account/Month	\$10.00	\$6.50	\$3.50
Stop Payment	Per Item	\$12.00	\$7.80	\$4.20
BAI Export Service	Per Month	\$25.00	\$16.25	\$8.75
<u>Wire Services</u>				
Module Fee	Per Month	\$25.00	\$16.25	\$8.75
Outgoing Wires	Per Wire	\$15.00	\$9.75	\$5.25
Batch Wires	Per Month	\$10.00	\$6.50	\$3.50
Wire Reporting	Per Month	\$10.00	\$6.50	\$3.50
Wire Report	Per Wire	\$0.50	\$0.325	\$0.175
<u>Dial-Up/Data Delivery - Items Loaded fees apply</u>				
Monthly Maintenance via Dial Up Connection	Per Month, Dial Up	\$75.00	\$48.75	\$26.25
BAI Reports	Per Connect	\$4.00	\$2.60	\$1.40
<u>Multi Bank Reporting - Items Loaded fees apply</u>				
Bank Implementation Fee	Per Account	\$100.00	\$65.00	\$35.00
Incoming Data Exchange	Per Account/Month	\$10.00	\$6.50	\$3.50
Items Received	Per Item	\$0.10	\$0.065	\$0.035
<u>Business Cash Advantage</u>				
Implementation Fee	One Time	\$25.00	\$16.25	\$8.75
Monthly Maintenance	Per Account/Month	\$125.00	\$81.25	\$43.75
<u>Check Imaging Service</u>				
Additional Account Set-up	One Time, Per Account Added	\$10.00	\$6.50	\$3.50
Image Fee	Per Item	\$0.035	\$0.023	\$0.012
CD Rom (Includes optional eVision online service)	Per CD	\$30.00	\$19.50	\$10.50
eVision - Only	Per Domain	\$20.00	\$13.00	\$7.00
<u>Concentration Service</u>				
Monthly Maintenance	Per Group	\$37.00	\$24.05	\$12.95
Sub Account	Per Sub Account	\$5.00	\$3.25	\$1.75
Implementation Maintenance, add or remove accounts	Per Change	\$10.00	\$6.50	\$3.50
<u>Electronic Data Interchange Service (EDI)</u>				
Implementation Fee	One Time, Per Acc/SEC Code	\$25.00	\$16.25	\$8.75
Monthly Maintenance	Per Account/Month	\$20.00	\$13.00	\$7.00
Fax Report Delivery	Account/Month	\$5.00	\$3.25	\$1.75
BBC Report Delivery		Waived	Waived	
<u>Just Pay It Service</u>				
Implementation Fees (Standard File Format)				
ACH Only	One-Time*, Per Box	\$2,500.00	\$1,625.00	\$875.00
ACH & Credit Card	One-Time*, Per Box	\$3,500.00	\$2,275.00	\$1,225.00
Monthly Maintenance	Per Month	\$150.00	\$97.50	\$52.50
Transaction Fee	Per payment	\$0.25	\$0.163	\$0.088
File Transmission (A/R Posting file - BOH Lockbox format)	Per File/Month	\$150.00	\$97.50	\$52.50
Liability File Processing	Per File/Month	\$750.00	\$487.50	\$262.50
Billar Console Licenses (10 Included)				
Additional Licenses	Per Additional License*	\$75.00	\$75.00	\$0.00
Training by Vendor(One Session Included)	+ All Travel Expenses*	\$500.00	\$500.00	\$0.00
Additional Onsite Training by Vendor	Per Session + All Travel Expenses*	\$500.00	\$500.00	\$0.00

Bank of Hawaii - Cash Management Fee Schedule		BoH Standard	ERS Exception 35% Discount	Per Item Savings
Lockbox Services				
Retail Lockbox				
Implementation Fees (Standard File Format)	One-Time*, Per Box	\$500.00	\$500.00	\$0.00
Monthly Maintenance		\$150.00	\$97.50	\$52.50
Per Item Fee				
Processed	Per Item	\$0.145	\$0.094	\$0.051
Unprocessed	Per Return	\$0.075	\$0.049	\$0.026
Unmatched Items (In addition to per item fee)	Per Item	\$0.040	\$0.026	\$0.014
Correspondence with Payment (Add to per item fee)	Per Item	\$0.075	\$0.049	\$0.026
Copy of Check (Processed with OCR payment)	Per Check	\$0.10	\$0.065	\$0.035
Electronic Output	Per Month	\$150.00	\$97.50	\$52.50
Re-creation of Electronic Output (Limited to retention schedule)	Per Output Request	\$50.00	\$32.50	\$17.50
Check only, MICR Capture	Per Check	\$0.30	\$0.195	\$0.105
Scanline Rejects in excess of 3%	Per Reject Item	\$2.00	\$1.30	\$0.70
Wholesale Lockbox				
Implementation Fee	One Time, Per Box	\$50.00	\$32.50	\$17.50
Monthly Maintenance	Per Month	\$70.00	\$45.50	\$24.50
Per Item Fee				
Processed	Per Check	\$0.35	\$0.228	\$0.123
Unprocessed	Per Return	\$0.075	\$0.049	\$0.026
Photocopy of Check	Per Check	\$0.15	\$0.098	\$0.053
Miscellaneous Fees - Applicable to retail and wholesale unless indicated				
Additional Deposit Slip/Ticket	Per Deposit	\$2.00	\$1.30	\$0.70
CD-Rom (Retail: coupon & check; Wholesale: check only)	Per CD	\$50.00	\$32.50	\$17.50
Deposit Reporting				
Deposit Amount Only				
In State	Per Fax	\$2.00	\$1.30	\$0.70
Out of State	Per Fax	\$5.00	\$3.25	\$1.75
Deposit Details, including check copies (Wholesale only)				
In State	Per Fax	\$3.00	\$1.95	\$1.05
Out of State	Per Fax	\$6.00	\$3.90	\$2.10
Multiple Payees (other than variations of account name)	Per Check	\$0.10	\$0.065	\$0.035
Photocopy Request, previously processed items	Per Item	\$2.50	\$1.625	\$0.875
Postage - Delivery of processed items	At Prevailing Rates			
Request for Special Processing	Per Request/Service	\$25.00	\$16.25	\$8.75
Vacation Status (Non-Processing periods)	Monthly Maintenance Fee	\$50.00	\$32.50	\$17.50
Outgoing Data Exchange Service				
Implementation Fee	One Time Per Account	\$75.00	\$48.75	\$26.25
Balances	Per Account/Month	\$60.00	\$39.00	\$21.00
Transaction Items Loaded	Per Item Details	\$0.10	\$0.065	\$0.035
Direct Send Option (Above monthly fees apply)				
Implementation Fee	One Time* Per Account	\$600.00	\$600.00	\$0.00
TXPress Service				
Implementation Fee	One Time Per TIN/Account	\$25.00	\$16.25	\$8.75
Monthly Maintenance Fee	Per Subscriber/Month	\$4.00	\$2.60	\$1.40
Tax Payment	Per Payment Transaction	\$3.00	\$1.95	\$1.05
Payment Cancellation	Per Reversal	\$10.00	\$6.50	\$3.50
Fax Receipts	Per Payment/Receipt	\$1.00	\$0.65	\$0.35
Mail Receipts	Per Payment/Receipt	\$2.00	\$1.30	\$0.70
Quarterly Reporting	Per Quarter	\$20.00	\$13.00	\$7.00
Increase Payment/Daily Limits	Per Request/Authority	\$5.00	\$3.25	\$1.75
Add New Tax Authority	Per Request/Authority	\$5.00	\$3.25	\$1.75
NSF/Uncollected Funds Return Handling	Per Incident	\$50.00	\$32.50	\$17.50
Miscellaneous Service Fees				
Security Device - Replacement/Lost/Additional Fee	Per Request	\$30.00	\$19.50	\$10.50
Research	Per 1/2 hour or fraction thereof	\$17.50	\$11.375	\$6.125
FTP Transmission Implementation	One Time* Per Service Request	\$600.00	\$600.00	\$0.00
* Indicates direct charge for fees paid to outside service providers.				
• Implementation fees will be charged upon commencement of the implementation process.				
• All implementation fees listed include standard setup. Customization, including file formats will result in additional direct cost.				

Bank of Hawaii - Account Analysis Fee Schedule		BoH Standard	ERS Exception 35% Discount	Per Item Savings
Account Maintenance	Per Month	\$ 12.50	\$ 8.1250	\$ 4.3750
Customer Checks Paid:				
With Cancelled Check Return	Per Check	\$ 0.12	\$ 0.078	\$ 0.042
With Check Safekeeping	Per Check	\$ 0.08	\$ 0.052	\$ 0.028
Customer Deposits	Per Deposit	\$ 0.90	\$ 0.59	\$ 0.32
Checks Deposited:				
On Us	Per Check	\$ 0.04	\$ 0.026	\$ 0.014
On Other Hawaii Banks	Per Check	\$ 0.06	\$ 0.039	\$ 0.021
On Other Banks	Per Check	\$ 0.07	\$ 0.0455	\$ 0.0245
Check Returned - Resubmitted for Payment	Per Check	\$ 6.00	\$ 3.90	\$ 2.10
Check Returned - Charged Back	Per Check	\$ 5.00	\$ 3.25	\$ 1.75
Cash Deposited	Per \$10.00	\$ 0.008	\$ 0.005	\$ 0.003
Loose Coins Deposited	Per Roll	\$ 0.10	\$ 0.065	\$ 0.035
Cash Provided	Per \$1.00	\$ 0.001	\$ 0.001	\$ 0.000
Rolled Coins Provided	Per Roll	\$ 0.08	\$ 0.052	\$ 0.028
Outgoing Wires (Non-BBC)	Per Wire	\$ 25.00	\$ 16.25	\$ 8.75
Incoming Wires	Per Wire	\$ 10.00	\$ 6.50	\$ 3.50
Advice by Email	Per Advice	\$ 1.00	\$ 0.65	\$ 0.35
Advice by Fax	Per Advice	\$ 2.00	\$ 1.30	\$ 0.70
Advice by Telephone	Per Advice	\$ 10.00	\$ 6.50	\$ 3.50
Advice by Email or Fax Setup - One Time	Per Setup	\$ 25.00	\$ 16.25	\$ 8.75
Wire Tracer/Cancellation	Per Item	\$ 25.00	\$ 16.25	\$ 8.75
ACH Debits and Credits Received	Per Item	\$ 0.035	\$ 0.0228	\$ 0.0123
Stop Pay Order (Check/EFT)	Per Stop	\$ 22.00	\$ 14.30	\$ 7.70
Post-Dated Check Notification	Per Notification	\$ 22.00	\$ 14.30	\$ 7.70
Faxed Statement	Per Statement	\$ 6.000	\$ 3.90	\$ 2.10
Additional Statement	Per Statement	\$ 4.000	\$ 2.60	\$ 1.40
Cashiers Checks	Per Check	\$ 8.000	\$ 5.20	\$ 2.80
Bank Assistance and Research	Per half hour or any fraction	\$ 17.500	\$ 11.375	\$ 6.125
Audit Confirmation Fee	Per Account/Request	\$ 15.000	\$ 9.75	\$ 5.25
NSF Item Paid	Per Item	\$ 22.000	\$ 14.30	\$ 7.70
Analysis Statement:				
Online Statement	Per Statement	No Charge	No Charge	\$ -
Paper Statement	Per Statement	\$ 5.00	\$ 3.250	\$ 1.750
Settlement Period Other Than Monthly	Per Month	\$ 15.00	\$ 9.750	\$ 5.250
Overdraft Interest	On Daily Uncollected Funds	Base + 3%	Base + 1.95%	1.05%
FDIC Insurance (Rate Changes Quarterly)	Per \$1,000 of Month-End Balance	\$ 0.0105	\$ 0.0068	\$ 0.0037
Note: Any services not listed will be billed at our prevailing rates.				

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

3. Personnel Requirements.
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
 - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
 - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.
 - c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing

agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.

7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:
 - (1) Cancel the stop performance order; or

- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
 - (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.
- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement

officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:
 - (1) Any completed goods or work product; and
 - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.
- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such

officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

(A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

(B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

(C) Within such further time as may be allowed by the Agency procurement officer in writing.

(2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

(3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

(4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

- e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.
 - b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
 - c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
 - d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.
- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.
22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.
23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:
- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
- (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.

- c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
- d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
- e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit

or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention. The CONTRACTOR and any subcontractors shall maintain the books and records that relate to the Contract and any cost or pricing data for three (3) years from the date of final payment under the Contract.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.
34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one

provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.

40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.

SPECIAL CONDITIONS

1. Paragraph 5 of the General Conditions is revised to read as follows:
 5. Conflicts of Interest. The CONTRACTOR represents that, except as disclosed in writing to the STATE, neither the CONTRACTOR nor, to the best of the CONTRACTOR's knowledge, any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Contract. CONTRACTOR shall promptly inform the STATE in writing of any such interest that comes to the attention of CONTRACTOR.
2. Paragraph 20 of the General Conditions is hereby deleted.
3. Paragraph 25 of the General Conditions is amended in its entirety to read as follows:
 25. Publicity. The CONTRACTOR shall not refer to the STATE or the State of Hawaii, or any office, agency, or officer thereof, or any STATE employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both provided under this Contract, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR; provided, however, that CONTRACTOR may include the STATE in a list of CONTRACTOR's customers. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
4. This Contract may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute but one and the same document.
5. Any notices under this Contract shall be in writing (which shall include a copy typed as a part of a telex or other wire or wireless transmission), may be given by hand, by mail (which shall be certified or registered mail), or by telegram, telex, or other wire or wireless transmission. Notices shall be deemed received by the party to whom addressed in the case of hand delivery, when actually received, or in the case of mail or telegram, three days after transmission, or in the case of a telex or other wire or wireless transmission, when transmitted and answerback received.